IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

RFA No 282 of 2000 a/w

RFA No.44 of 2002

Date of decision: 26th September, 2007

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1. RFA No.282 of 2000

Sewak Ram & others — Appellants

versus

State of H.P. — Respondent

2. RFA No.44 of 2002

State of H P. — Appellant

Versus

Sewak Ram & others — Respondents

Coram:

The Hon'ble Mr.Justice Surinder Singh, J.

Whether approved for reporting ?[1] *No.*

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IN RFA No.282/2000

For the appellants : Mr D.Ghosh, Advocate

For the respondent : Mr D.S.Nainta, Dy.Advocate General.

IN RFA No.44 of 2002

For the appellant : Mr D.S.Nainta, Dy. Advocate General.

For the respondents: Mr.D.Ghosh, Advocate.

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgment ?. yes.***

Surinder Singh, J. (Oral)

Both these appeals, one filed by the claimants and other by the State from the same award dated 1.11.1999, are being disposed of by this common judgment as they involve common question of law and facts.

In brief, the facts of the case are that the Government of Himachal Pradesh had issued a Notification under Section 4 of the Land Acquisition Act, in short "the Act" on 11.5.1989, but it got elapsed, as no further proceedings were taken up, therefore, a fresh notification under section 4 of the Act was issued on 5.6.1995 for acquisition of land in dispute for public purpose i.e. "construction of Shoghi-Dhari Road". The Land Acquisition Collector had assessed and awarded the amount of compensation based upon the classification of land to various land owners.

The appellants felt aggrieved by and dissatisfied with the impugned award of the Land Acquisition Collector thus preferred the Land Reference, which was sent to the learned District Judge for determination under section 18 of the Act. The learned District Judge, after considering the evidence on record, vide impugned award held that the amount of compensation awarded by the Land Acquisition Collector was adequate but allowed the interest on the compensation amount awarded by the Land Acquisition

Collector from the year 1987, when the trace cutting was done on the acquired land on the presumption that the possession was taken over by the respondents. The interest at the rate of 9% per annum w.e.f. 1.12.1987 to 30.11.1988 and further at the rate of 15% per annum w.e.f. 1.12.1988 to the date of award of the Land Acquisition Collector, i.e. 3.6.1996 on the market value of the acquired property, as assessed by the Land Acquisition Collector, was also awarded. However, the appellants were not held entitled to the increase of any amount under Section 23(1-A) of the Act. The amount awarded and paid off on account of such increase was ordered to be set off against the amount of interest ordered to be paid to the appellants.

The claimants have assailed the impugned award in the instant appeals on the grounds that the learned District Judge had acted as an appellate court whereas he was required to determine the amount independently and that the evidence was not appreciated in its right perspective thus erred in determining the market value of the land.

The respondent-State also felt aggrieved by the impugned award and filed a separate appeal on the ground that the interest awarded by the learned District Judge from the date of possession was wrong and illegal. The appellants were only entitled to

interest from the date of notification under section 4(1) of the Act.

Learned counsel for the appellants has argued that the impugned award passed by the learned District Judge is wrong and illegal and further ventilated that the Land Acquisition Collector has assessed the market value of the land on the basis of the classification of the land which varies from Rs.6,060/- for ghasni land to Rs.2,76,760/- per bigha for the irrigated land whereas the Reference court, after considering the award should have awarded the compensation payable to the highest class of land uniformly and that the evidence on record was wrongly appreciated, which has caused the miscarriage of justice. He further placed two judgments of this court passed in R.F.A.352 of 2000 along with RFAs No.353 & 354 of 2000, decided on 27.8.2007 and in RFA No. 340 of 2000 decided on 7.9.2007, with respect to the other adjacent land covered under the notification dated 5.6.1995 whereby the coordinate Benches have awarded uniformly the amount of Rs.2,76,760/- per bigha.

Shri Nainta, learned Deputy Advocate General has admitted that the purpose of acquisition, date of notification under Section 4 of the Act and the date of award passed by the learned District Judge in the RFA's cited above are the same and the claimants were awarded the compensation uniformly by this Court. Since, the

learned District Judge had wrongly awarded the interest from the date of possession which in fact should have been awarded from the date of notification under section 4 of the Act i.e. 5.6.1995.

I have considered the rival contentions of the learned counsel for the parties and have gone through the record.

Claimants had produced Sewak Ram (PW1), to prove the potentially of the acquired land. He claimed Rs.4 lac. per bigha, which was the prevalent rate at the time of the notification under section 4 of the Act. Puran Chand Patwari (PW2) produced statement Ex.P1 of sale transaction taken place between 1991 to 1992. Het Ram (PW3) vendor and Ramesh Thakur (PW4) vendee proved the sale deed Ex.P4 of 0-4 biswas having consideration mount of Rs.72,000/- It is situated 2 furlongs away from the acquired land, abutting the road. Further the claimants also relied upon awards Ex.PX and Ex.PX1. Respondents only examined Patwari. The land, under acquisition, has different types of land. As already said all these types of land have been acquired by the State Government for the public purpose i.e. for the construction of the “Shoghi-Dhari road”, by a common notification issued under section 4 of the Act. The Land Acquisition Collector had awarded the compensation to various land owners for different kinds of land as under:

Kind of land	**Rate per bigha**
Kuhl	Rs.2,76,760/-
Katul	Rs.2,02,020/-
Bangar Abhal	Rs.1,51,520/-
Banger Doem	Rs.1,01,020/-
Banger Soem	Rs. 50,500/-
Banjar Kadim	Rs. 18,180/-
Ghasni	Rs. 6,060/-

The learned District Judge has considered the evidence aforesaid and did not allow any enhancement but it is by now sell settled that the classification of acquired land for the agricultural purpose is not relevant looking to the common purpose of acquisition, which in this case is the construction of road. Therefore, applying the ratio of the case LAC Solan & another versus Bhoop Ram: 1997 (2) S.L.C. 229, the claimants are of course entitled for compensation at the highest rate assessed by the Collector L.A.C. for the best and highest category of the land.

Since the coordinate benches of this court have already modified the award dated 1.11.1999 of the learned district Judge with respect to the adjacent lands / acquired for the same purpose and covered by the same notification, the claimants in this case too are held entitled to a uniform enhancement of compensation to the tune of Rs.2,76,760/- per bigha for the acquired land irrespective of different category of classification of land.

Accordingly, both the appeals are allowed. The award passed by the learned District Judge stands modified as aforesaid and the appellants are also held entitled for all statutory benefits including interest on the solatium from the date of publication of the notification i.e. 5.6.1995 till the date of payment, as may be applicable u/s 23,23(1-A), 28 & 34 of the Act, in accordance with the law laid down by the Apex Court in Sunder Versus Union of India: 2001 (7) SCC 211. However, it is clarified that the interest which was directed to be paid from the date of possession i.e. 1987 by the learned District Judge is now ordered to be paid from the date of publication of the notification under section 4 of the Act i.e. 5.6.1995. Accordingly, the award of the learned District Judge, stands modified. Both the appeals are disposed of.

September 26,2007 (Surinder Singh),J.
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